



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG-2013-0562]

RIN 1625-AA09

Drawbridge Operation Regulation; Inner Harbor Navigational Canal, New Orleans, LA

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is modifying the operating schedules that govern the US 90 (Danzinger) Bridge across the Inner Harbor Navigational Canal (IHNC), mile 3.1 and the Senator Ted Hickey (Leon C. Simon Blvd./Seabrook) bridge across the IHNC, mile 4.6, both at New Orleans, LA. This change allows for the safe navigation of vessels while reflecting the low volume of vessel traffic through the bridges thereby increasing efficiency of operations. The changes allow the bridges to operate in a manner that aligns the two operating schedules so the bridge owner will be able to use the same bridge crew personnel to operate both bridges with little to no effect on navigation through the bridges.

DATES: This rule is effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Documents mentioned in this preamble are part of docket USCG-2013-0562. To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type the docket number in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail Mr. Jim Wetherington, Coast Guard; telephone 504-671-2128, e-mail james.r.wetherington@uscg.mil. If you have questions on viewing the docket, call Cheryl F. Collins, Program Manager, Docket Operations, telephone 202-366-9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	<u>Federal Register</u>
GIWW	Gulf Intracoastal Waterway
IHNC	Inner Harbor Navigation Canal
LDOTD	Louisiana Department of Transportation

and Development
NPRM Notice of Proposed Rulemaking
§ Section Symbol
U.S.C. United States Code

A. Regulatory History and Information

On October 23, 2013 we published a notice of proposed rulemaking (NPRM) entitled Drawbridge Operation Regulation; Inner Harbor Navigational Canal, New Orleans, LA in the Federal Register (78 FR 63136) proposing the changes in the operating schedules for these two bridges. We also published a notice of temporary deviation from regulations; request for comments to run congruently with the NPRM, on October 22, 2013 (78 FR 62439). The temporary deviation served as a test period for the changes, allowing for public comment while the changes were in place. We received no comments on either action. No public meeting was requested, and none was held.

B. Basis and Purpose

The Louisiana Department of Transportation and Development (LDOTD), on behalf of the Orleans Levee District, requested a change to the operating regulations for the U.S. 90 (Danziger) and the Senator Ted Hickey (Leon C. Simon Blvd./Seabrook) bridges on the IHNC past the Gulf Intracostal Waterway (GIWW). The Coast Guard has approved this request. These changes allow LDOTD to operate these two bridges with the same personnel, thereby increasing the overall efficiency

of operations on these bridges and ultimately reducing overall operational costs while allowing for improved transit through these bridges. This section of the IHNC is not on the GIWW and therefore has far fewer opening requests than the bridges over the GIWW.

The US 90 (Danzinger) Bridge across the IHNC, mile 3.1, at New Orleans, Orleans Parish, Louisiana is a vertical lift bridge with a vertical clearance of 50 feet above Mean High Water (MHW), elevation 5.0 Mean Sea Level (MSL), in the closed-to-navigation position and 120 feet MHW, elevation 5.0 MSL, in the open-to-navigation position; it averaged nine openings per month in the last year. The Senator Ted Hickey (Leon C. Simon Blvd./Seabrook) Bridge across the IHNC, mile 4.6, at New Orleans, Orleans Parish, Louisiana is a bascule bridge with a vertical clearance of 46 feet above Mean High Water (MHW), elevation 5.0 Mean Sea Level (MSL), in the closed-to-navigation position and unlimited in the open-to-navigation position; it averaged 32 openings a month in the past year.

C. Discussion of Comments, Changes and the Final Rule

The Coast Guard provided a comment period of 60 days and received no comments on this regulatory action. One change to the regulatory text is made through this final rule for clarity. This change is regarding when a request for opening is required. The NPRM text states "the draw of the Senator

Ted Hickey (Leon C. Simon Blvd./Seabrook) Bridge, mile 4.6, shall open on signal from 8 a.m. through 8 p.m. and from 8 p.m. through 8 a.m. if at least two hours notice is given; except that the draw need not be opened from 7 a.m. to 8:30 a.m. and 5 p.m. to 6:30 p.m. Monday through Friday". The corrected text states "the draw of the Senator Ted Hickey (Leon C. Simon Blvd./Seabrook) Bridge, mile 4.6, shall open on signal from 7 a.m. to 8 p.m.; except the bridge need not open from 7 a.m. to 8:30 a.m. and 5 p.m. to 6:30 p.m. Monday through Friday. From 8 p.m. to 7 a.m., the draw shall open on signal if at least two hours notice is given". This change of text corrects an overlap of time periods in the previous text and makes the rule clearer.

The US 90 (Danzinger) Bridge, mile 3.1, has a current operating schedule under 33 CFR 117.458(b). The bridge shall open on signal; except that from 8 p.m. to 7 a.m. the draw shall open on signal if at least four hours notice is given, and the draw need not be opened from 7 a.m. to 8:30 a.m. and 5 p.m. to 6:30 p.m. Monday through Friday. 33 CFR 117.458(b) will now allow the Danzinger Bridge to open if two hours notice is given 24 hours a day; except the bridge need not open from 7 a.m. to 8:30 a.m. and 5 p.m. to 6:30 p.m. Monday through Friday. This change allows for the safe navigation of vessels while reflecting the low volume of vessel traffic through this bridge thereby increasing efficiency of

operations. The change also allows the bridges to operate in a manner that aligns it with the operating schedules of the bridges upstream so the bridge owner will be able to use the same bridge crew personnel to operate both of their bridges with little to no effect on navigation through the bridges.

The Senator Ted Hickey (Leon C. Simon Blvd./Seabrook) Bridge has a current operating schedule under 33 CFR 117.458(c). The bridge will open on signal at all times but is allowed to remain closed from 7 a.m. to 8:30 a.m. and 5 p.m. to 6:30 p.m. Monday through Friday. 33 CFR 117.458(c) will now allow the Senator Ted Hickey Bridge to open on signal from 7 a.m. to 8 p.m.; except the bridge need not open from 7 a.m. to 8:30 a.m. and 5 p.m. to 6:30 p.m. Monday through Friday. From 8 p.m. to 7 a.m., the draw shall open on signal if at least two hours notice is given. This change allows for the safe navigation of vessels while reflecting the low volume of vessel traffic through this bridge thereby increasing efficiency of operations. The change also allows the bridges to operate in a manner that aligns it with the operating schedules of the bridges upstream so the bridge owner will be able to use the same bridge crew personnel to operate both of their bridges with little to no effect on navigation through the bridges.

D. Regulatory Analyses

We developed this rule after considering numerous

statutes and executive orders related to rulemaking. Below we summarize our analyses based on these statutes or executive orders.

1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders.

This rule is not a significant regulatory action. This rule merely modified a currently existing regulation by adjusting the required time of notification necessary to request a bridge opening. Mariners passing through this area will be aware of the notification requirements and will be able to plan their transits accordingly and provide the proper notice if necessary.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601-612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term "small entities" comprises small businesses, not-for-profit organizations that are

independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard received no comments from the Small Business Administration on this rule. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This final rule will affect the following entities, some of which might be small entities: the owners or operators of vessels needing to transit the Danzinger Bridge with less than two hours notice 24 hours a day and the owners or operators of vessels needing to transit the Senator Tom Hickey bridge between 8 p.m. to 7 a.m. on less than a two-hour notice. No comments were received from any of these entities regarding this action. Due to the limited use of the non-GIWW section of the Inner Harbor Navigation Canal, and the lack of commentary contradicting the determination, it has been determined that there will be little affect on small entities.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning

its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT, above.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

4. Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the "For Further Information Contact" section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

7. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

8. Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

9. Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

10. Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that might disproportionately affect children.

11. Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

12. Energy Effects

This action is not a "significant energy action" under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

13. Technical Standards

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have concluded that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves the operating regulations or procedures for drawbridges. This rule is categorically excluded, under figure 2-1, paragraph (32)(e), of the Instruction.

Under figure 2-1, paragraph (32)(e), of the Instruction, an environmental analysis checklist and a categorical exclusion determination are not required for this rule.

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 33 CFR 1.05-1; Department of Homeland Security Delegation No. 0170.1.

2. Section 117.458(b) and (c) are revised to read as follows:

§ 117.458 Inner Harbor Navigation Canal, New Orleans.

* * * * *

(b) The US 90 (Danzinger) Bridge, mile 3.1, shall open on signal if at least two hours notice is given; except that the draw need not be opened from 7 a.m. to 8:30 a.m. and 5 p.m. to 6:30 p.m. Monday through Friday.

(c) The draw of the Senator Ted Hickey (Leon C. Simon Blvd./Seabrook) Bridge, mile 4.6, shall open on signal from 7

a.m. to 8 p.m.; except that the bridge need not open from 7 a.m. to 8:30 a.m. and 5 p.m. to 6:30 p.m. Monday through Friday. From 8 p.m. to 7 a.m., the draw shall open on signal if at least two hours notice is given.

Dated: January 28, 2014

Kevin S. Cook

Rear Admiral, U.S. Coast Guard

Commander, Eighth Coast Guard District

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